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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,
8 Plaintiff/Respondent,
9 v.
10 WILLIAM WEILAND,
11 Defendant/Petitioner.

NO. CR-03-70-EFS

**ORDER DENYING DEFENDANT'S MOTION
TO VACATE SENTENCE AND FOR
IMMEDIATE RELEASE**

12 Defendant William Weiland seeks to vacate his sentence based on
13 the rules articulated by the Supreme Court in *Johnson v. United*
14 *States*, 135 S. Ct. 2251 (2015). ECF No. 163. Mr. Weiland asks the
15 Court to find that his prior convictions can no longer form the basis
16 for an Armed Career Criminal sentencing enhancement and to vacate his
17 sentence. On March 15, 2016, the Court held a hearing on Defendant's
18 Motion to Vacate Sentence and for Immediate Release pursuant to 28
19 U.S.C. § 2255. ECF Nos. 170-171. Russell Smoot appeared for the U.S.
20 Attorney's Office (hereinafter, "the government"). Defense counsel
21 Alison Guernsey represented Defendant, who was not present.¹ After
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¹ "A court may entertain and determine such motion without requiring the
26 production of the prisoner at the hearing." 28 U.S.C. § 2255(c).

1 reviewing the record and hearing from counsel, the Court denies Mr.
2 Weiland's habeas motion for the reasons set forth below.

3 In 2003, Mr. Weiland was found guilty of possessing a firearm
4 while being a convicted felon under 18 U.S.C. § 922(g)(1), subjecting
5 Defendant to a statutory maximum sentence of not more than 10 years
6 imprisonment. ECF Nos. 98 & 99; 18 U.S.C. § 924(a)(2). At his
7 sentencing, however, the Court determined Mr. Weiland qualified as an
8 Armed Career Criminal under 18 U.S.C. § 924(e) because he had four
9 prior convictions for Second Degree Burglary in Oklahoma, which
10 qualified as violent felonies under the modified categorical approach.
11 ECF Nos. 89 & 99. As a result, he was subject to a mandatory minimum
12 sentence of fifteen years and a maximum sentence of life in prison.
13 The Court sentenced Mr. Weiland to 188 months. ECF No. 98.

14 On August 24, 2005, the Ninth Circuit Court of Appeals affirmed
15 Mr. Weiland's judgment and sentence. See *U.S. v. Weiland*, 420 F.3d
16 1062 (9th Cir. 2005). Specifically, the Ninth Circuit rejected
17 Defendant Weiland's argument that the four "Oklahoma Second Degree
18 Burglary convictions should not have been used to enhance his sentence
19 under the Armed Career Criminal Act because the government did not
20 establish that he was convicted of four crimes that included the
21 elements of generic burglary." *Weiland*, 420 F.3d at 1079 (9th Cir.
22 2005). Instead, "applying the modified categorical approach," the
23 Ninth Circuit again "approved the use of these exact Oklahoma
24 documents under the modified categorical approach." *Id.* The Ninth
25 Circuit affirmed Mr. Weiland's 188-month sentence.

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1 Ten years after the Ninth Circuit affirmed Mr. Weiland's
 2 conviction and sentence, the Supreme Court decided *Johnson v. United*
 3 *States*:

4 hold[ing] that imposing an increased sentence under the
 5 residual clause of the Armed Career Criminal Act violates
 6 the Constitution's guarantee of due process. Our contrary
 7 holdings in *James* and *Sykes* are overruled. Today's decision
 does not call into question application of the Act to the
 four enumerated offenses, or the remainder of the Act's
 definition of a violent felony.

8 135 S. Ct. 2551, 2563 (2015). The Supreme Court found the residual
 9 clause unconstitutional because it "denies fair notice to defendants"
 10 and "due process of law." *Id.* at 2557. In light of *Johnson*, Mr.
 11 Weiland brings this motion pursuant to 28 U.S.C. § 2255. He contends
 12 that he is serving an illegal sentence because he has already served
 13 more than the ten-year statutory maximum he would have been subject to
 14 had this Court not found him to be an armed career criminal under
 15 ACCA's residual clause.

16 The Court finds, however, that *Johnson* is inapplicable to Mr.
 17 Weiland's case. *Johnson* specifically found ACCA's residual clause to
 18 be unconstitutional but explicitly stated that "the remainder of the
 19 Act's definition of a violent felony," remains unchanged. *Id.* See
 20 also, *Welch v. United States*, 578 U.S. __ (2016) (stating that
 21 convictions under ACCA's other clauses are unaffected by *Johnson*). In
 22 Mr. Weiland's case, all of his ACCA predicate offenses were found
 23 under the modified categorical approach and not under the residual
 24 clause. Therefore, *Johnson* cannot provide him the relief he seeks.

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Accordingly, **IT IS HEREBY ORDERED:** Defendant's Motion to Vacate Sentence and for Immediate Release, **ECF No. 163**, is **DENIED**.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel and the U.S. Probation Office.

DATED this 19th day of April 2016.

s/Edward F. Shea

EDWARD F. SHEA

Senior United States District Judge